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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 587

CONSOLIDATED TEXTILE CORPORATION,
APPELLANT,

vs.

JOHN J. GREGORY, JUDGE OF THE CIRCUIT
COURT OF MILWAUKEE COUNTY

APPEAL FROM THE SUPREME COURT OF THE STATE OF
WISCONSIN

FILED DECEMBER 31, 1932

(37,284)

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IN SUPREME COURT OF WISCONSIN, AUGUST TERM, 1932

State No. 22

STATE ex Rel. CONSOLIDATED TEXTILE CORPORATION, a Corporation, Petitioner,

vs.

JOHN J. GREGORY, Judge of the Circuit Court of Milwaukee County, Respondent

PETITION FOR APPEAL—Filed Dec. 6, 1932

To the Honorable M. B. Rosenberry, Chief Justice of the Supreme Court of the State of Wisconsin:

Consolidated Textile Corporation, your petitioner, who is the petitioner in the above entitled cause, prays that it may be permitted to take an appeal from the judgment entered in the above entitled cause on the 9th day of November, 1932, to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, be sent to the Supreme Court of the United States under the rules of such court in such case made and provided.

Dated December 6, 1932.

George B. Hudnall, Louis A. Lecher, Frank L. McNamara, Sml. O. Arnold, Attorneys for Petitioner.

[File endorsement omitted.]

[fols. 3 & 4] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER ALLOWING APPEAL—Filed Dec. 6, 1932

The petition of the Consolidated Textile Corporation, petitioner in the above entitled cause, for an appeal from the final judgment denying a writ of prohibition hereto-

fore filed and rendered herein on the 9th day of November, 1932, is hereby granted, and the appeal is allowed; the amount of the appeal bond being hereby fixed at the sum of Two Hundred Fifty Dollars ($250.00), with surety to be approved by the Court or a Judge thereof.

Dated this 6 day of December, 1932.

Marvin B. Rosenberry, Chief Justice of the Supreme Court of the State of Wisconsin. (Seal Supreme Court of Wisconsin.)

[File endorsement omitted.]

[fols. 5-12] Bond on appeal for $250.00, approved and filed December 6, 1932, omitted in printing.

[fols.13-15] Citation, in usual form, showing service on Walter L. Gold et al., filed December 6, 1932, omitted in printing.

[fol. 16] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Dec. 6, 1932

The petitioner, in connection with its petition for appeal herein, presents and files therewith its assignment of errors as to such matters and things it says that the judgment of the court herein on the 9th day of November, 1932, is erroneous, to-wit:

First. The court erred in holding that § 262.09 (13) of the Statutes of the State of Wisconsin is constitutional.

Second. The court erred in failing to hold that § 262.09 (13) of the Wisconsin Statutes is unconstitutional in that it deprives the petitioner of its property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution.

Third. The court erred in holding that the courts in the State of Wisconsin may constitutionally obtain jurisdiction over an unlicensed foreign corporation which does not do business in the State of Wisconsin by service of process on an officer of such corporation who is temporarily in the state for the purpose of compromising a suit at law instituted against the corporation in a sister state, as provided by § 262.09 (13) of the Wisconsin Statutes.

[fols. 17-43] Fourth. That the court erred in holding that the courts in the State of Wisconsin may constitutionally obtain jurisdiction over an unlicensed foreign corporation which does not do business in the State of Wisconsin by service of process on an officer of such corporation who is temporarily in the state for the purpose of compromising a suit at law instituted against the corporation in a sister state where the cause of action sued upon is one which arose out of a transaction outside of the State, as provided by § 262.09 (13) of the Wisconsin Statutes.

Fifth. That the court erred in failing to hold that the doing of interstate business by an unlicensed foreign corporation, the entire stock of which is owned by an unlicensed foreign corporation, does not constitute the doing of business by such parent corporation in such state, and in failing to hold that § 262.09 (13) of the Wisconsin Statutes, which authorizes service to be made on an officer of such unlicensed foreign corporation, is unconstitutional in that it deprives the petitioner of its property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution.

Wherefore Petitioner prays that the said judgment may be reversed and for such other and further relief as to the Court may seem just and proper.

Dated December 6, 1932.

George B. Hudnall, Louis A. Lecher, Frank L. McNamara, Sml. O. Arnold, Attorneys for Petitioner.

Presented and filed this 6 day of December, 1932.

Marvin B. Rosenberry, Chief Justice of the Supreme Court of the State of Wisconsin. (Seal Supreme Court of Wisconsin.)

[fols. 44-47] Here appears præcipe for transcript on appeal, together with admission of service.

[fol. 48] Pleas Before the Supreme Court of the State of Wisconsin at a Term Thereof Begun and Held at the Capitol, in Madison, the Seat of Government of said State, on the Second Tuesday, to wit, the 9th Day, of August, A. D. 1932

Present: Hon. Marvin B. Rosenberry, Chief Justice; Hon. Walter C. Owen, Hon. Chester A. Fowler, Hon. Oscar M. Fritz, Hon. Edward T. Fairchild, Hon. John D. Wickhem, Hon. George B. Nelson, Justices; Arthur A. McLeod, Clerk.

Be it remembered that heretofore, to-wit: on the thirty-first day of August, in the year of our Lord One Thousand Nine Hundred and Thirty-Two came into the office of the Clerk of the Supreme Court of the State of Wisconsin, the Consolidated Textile Corporation, by its attorneys, and filed in said Court its certain application for leave to file a petition for writ of prohibition, according to the statute in such case made and provided, and demurrer to the return of the Honorable John J. Gregory, Judge of the Circuit Court of Milwaukee County, in said State, in words and figures following, that is to say:

[fol. 49] [File endorsement omitted]

In Supreme Court of Wisconsin

State ex Rel. Consolidated Textile Corporation, a Corporation, Petitioner,

vs.

John J. Gregory, Judge of the Circuit Court of Milwaukee County, Respondent

Petition for Writ of Prohibition—Filed Sept. 27, 1932

To the Honorable the Supreme Court of the State of Wisconsin:

The petition of the Consolidated Textile Corporation respectfully alleges:

(1) That your petitioner is a corporation organized under the laws of the State of Delaware with its office and

principal place of business in the city, county and state of New York.

(2) That Frederick K. Rupprecht is the President of your petitioner, and is a resident of the city, county and state of New York.

(3) That on the 14th day of January, 1932, a summons, a copy of which, marked exhibit "A", is hereto annexed and forms a part hereof as if fully set forth herein, was served on Frederick K. Rupprecht, whereby your petitioner was summoned to appear in the Circuit Court for Milwaukee County to answer the plaintiff's complaint, copy of which, marked exhibit "B", is hereto annexed and forms a part hereof as if fully set forth herein.

[fol. 50] (4) That in pursuance to said summons, your petitioner, by Bottum, Hudnall, Lecher, McNamara & Michael, its attorneys, appearing specially for the sole purpose of moving to vacate and set aside the service of the summons and to dismiss said action on the ground that the Court did not have jurisdiction over said action and on the 13th day of February, 1932, attended before the Court and moved to vacate and set aside the service of the summons and to dismiss said action on the ground that the Court had no jurisdiction over said action for the following reasons: That your petitioner was a corporation organized and existing under and by virtue of the laws of the State of Delaware; that it was not licensed to do business in the state of Wisconsin; that it had not in fact done business in the state of Wisconsin, and that it had no property or place of business or office or agent in the state of Wisconsin; that Frederick K. Rupprecht, president of your petitioner, was a resident of the city, county and state of New York; that service of said summons on the said Frederick K. Rupprecht was made while he was temporarily within the city and county of Milwaukee and state of Wisconsin; all of which said facts and circumstances were more particularly set forth in the affidavit of the said Frederick K. Rupprecht which is now on file in the Circuit Court for Milwaukee County, and constituted a part of the motion of your petitioner to vacate and set aside the service of the summons and to dismiss said action, copy of which affidavit marked exhibit "C" is attached hereto and forms a part

hereof as if fully set forth herein; that the service of summons on a foreign corporation was controlled by the Stat-
[fol. 51] utes of the State of Wisconsin; that the only Statute in Wisconsin which in any manner might authorize service of said summons was Subsection (13) of Section 262.09 of the Wisconsin Statutes; that the service of said summons was not authorized under Subsection (13) of Section 262.09 of the Wisconsin Statutes; that if the service of said summons was authorized under Subsection (13) of Section 262.09 of the Wisconsin Statutes, said Subsection (13) of Section 262.09 of the Wisconsin Statutes was unconstitutional in that it deprived your petitioner of its property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States; that the service of said summons under the said circumstances, as hereinbefore related, deprived your petitioner of its property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

(5) That the plaintiff in said action in opposition to said motion to vacate and set aside the service of summons and to dismiss said action, filed affidavits of Walter L. Gold and Morris Karon, which said affidavits are now on file in the Circuit Court for Milwaukee County, as a part of the file in said action, copies of which affidavits marked respectively Exhibit "D" and Exhibit "D-1" are attached hereto and form a part hereof as if fully set forth herein; that said affidavits are made a part of this petition at the request of the attorneys representing the plaintiff in said action to obviate the necessity of filing a return to the alternative writ of prohibition to be issued hereunder by the Supreme Court.

(6) That the sole purpose of the said Frederick K. Rupprecht in coming to Milwaukee on the said 14th day of January, 1932, was to confer with the said Walter L. Gold [fol. 52] and was not for the purpose of transacting business for your petitioner; that the said Frederick K. Rupprecht did not on the 14th day of January, 1932, or at any other time, confer with Gimbel Brothers in the city of Milwaukee or state of Wisconsin, or with any other mercantile establishment in the city of Milwaukee.

(7) That your petitioner has not at any time transacted any business in Wisconsin in any manner whatsoever; that the Consolidated Selling Company is a corporation organized under the laws of the state of Delaware with its office and principal place of business in the city, county and state of New York; that your petitioner owns all of the stock of the said Consolidated Selling Company; that said Consolidated Selling Company is not licensed to do business in the state of Wisconsin and that the only business conducted by the Consolidated Selling Company in Wisconsin is interstate in character and is conducted by means of nonresident agents who solicit orders in Wisconsin which are accepted in New York City.

(8) That the cause of action set forth in the plaintiff's complaint, a copy of which marked Exhibit "B" is attached hereto and forms a part hereof, shows upon its face that the cause of action therein alleged, arose out of a transaction outside the state of Wisconsin; that the said bonds referred to in said complaint were a portion of an issue of twenty year eight percent sinking fund convertible gold bonds which were issued by your petitioner; that the principal and interest on the said bonds are payable at the principal office of the Chase National Bank in the city, [fol. 53] county and state of New York; that no part of the transaction in which said bonds were issued by your petitioner took place in the state of Wisconsin; that if Subsection (13) of Section 262.09 of the Statutes authorized service on your petitioner, Subsection (13) of Section 262.09 violates the Fourteenth Amendment to the Federal Constitution by depriving your petitioner of its property without due process of law.

(9) That the said action in which the said Katherine Gold is plaintiff and Consolidated Textile Corporation is defendant, is one of seven actions now pending in the Circuit Court for Milwaukee County for the recovery of principal and interest on bonds issued by your petitioner, and in which your petitioner is defendant; that the names of the plaintiffs in said actions are as follows: Cecilia Alshuler, Blanche Oster, Lillie Mock, Walter L. Gold, Gold Realty Company, a corporation, and Central Holding Company, a corporation; that pursuant to agreement with coun-

sel representing said plaintiffs, the decision of this Court in this proceeding shall be controlling in all of said actions.

(10) That the hearing on said motion to vacate and set aside the service of said summons and to dismiss said action was postponed from time to time until the 9th day of April, 1932, at which time said motion was argued before the said Circuit Court for Milwaukee County in that branch presided over by the Hon. John J. Gregory, Circuit Judge presiding.

(11) That the said the Hon. John J. Gregory, notwithstanding said motion and objection, did proceed to hear said cause and refuse to dismiss the same, and on or about the 30th day of June, 1932, decided that he had jurisdiction over said action and on said day entered an order, a copy of which marked Exhibit "E," is annexed hereto and forms a part hereof as if fully set forth herein, dismissing the said motion of your petitioner to vacate and set aside the service of said summons and to dismiss said action; that [fol. 54] thereafter and on the 1st day of July, 1932, judgment was entered in favor of the plaintiff and against the defendant, your petitioner, as prayed for in said complaint; that neither your petitioner nor its said attorneys, Bottum, Hudnall, Lecher, McNamara & Michael, had knowledge or notice of said order dated June 30, 1932, or of said judgment dated July 1, 1932, until the 12th day of July, 1932, at which time the attorneys for the plaintiff served notice of entry of order and notice of entry of judgment on the attorneys for your petitioner; that immediately thereafter said attorneys for the Consolidated Textile Corporation communicated with the Honorable John J. Gregory, Circuit Judge, who was on his vacation at Sayner, Wisconsin, requesting said Judge to sign an order to show cause why a rehearing and review of said order of June 30, 1932 should not be granted; that on the 28th day of July, 1932, an order to show cause signed by the said the Honorable John J. Gregory, returnable on the 29th day of August, 1932, the date on which said Judge would return from his said vacation, was served on the attorneys for the plaintiff; that on the 29th day of August, 1932, said order to show cause came on to be heard before the Circuit Court for Milwaukee County, the said Honorable John J. Gregory, Circuit Judge, presiding, who thereupon announced in open Court

his decision that by reason of the fact that neither your petitioner nor its said attorneys had knowledge or notice of said order of June 30, 1932, prior to the entry of the judgment on July 1, 1932, the Court on its own motion would set aside said judgment of July 1, 1932, and would stay entry of Judgment for a period of five (5) days thereafter to permit your petitioner to enter a general appearance, to demur, to answer or otherwise plead to the Plaintiff's com-[fol. 55] plaint; that on the 30th day of August, 1932, an order was entered in accordance with the said oral decision of the said Court, a copy of which marked Exhibit "F" is hereto annexed and forms a part hereof as if fully set forth herein; that pursuant to said order your petitioner was required to make a general appearance, to demur, to answer or otherwise plead to the plaintiff's complaint on or before September 6th, 1932, or in the alternative to permit judgment to go against your petitioner by default.

(12) That your petitioner has no speedy or adequate remedy by appeal or otherwise.

Wherefore your petitioner prays that this Court issue its writ of prohibition commanding said Court to desist from any further proceedings in said action.

Consolidated Textile Corporation, Petitioner. Bottum, Hudnall, Lecher, McNamara & Michael, Attorneys for Petitioner.

[fol. 56] *Duly sworn to by F. K. Rupprecht. Jurat omitted in printing.*

[fol. 57] EXHIBIT "A" TO PETITION

STATE OF WISCONSIN:

CIRCUIT COURT, MILWAUKEE COUNTY

KATHERINE GOLD, Plaintiff,

vs.

CONSOLIDATED TEXTILE CORPORATION, Defendant

Summons

The State of Wisconsin to the said defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of serv-

ice, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint; of which a copy is herewith served upon you.

Gold and McCann, Plaintiff's Attorneys.

P. O. Address: 625-630 Caswell Block, 152 W. Wisconsin Ave., Milwaukee, Milwaukee County, Wis.

[Endorsed:] Summons.

[fol. 58] EXHIBIT "B" TO PETITION

STATE OF WISCONSIN,
Milwaukee County:

CIRCUIT COURT

KATHERINE GOLD, Plaintiff,

vs.

CONSOLIDATED TEXTILE CORPORATION, Defendant

Now comes the above named plaintiff by Gold and McCann, her attorneys, and for a complaint against the defendant alleges and shows unto the court as follows:

First Cause of Action

1. Plaintiff at all times hereinafter mentioned was and now is a citizen and resident of the city and county of Milwaukee, Wisconsin.

2. Defendant at all times hereinafter mentioned was and now is a foreign corporation duly organized and existing under and by virtue of the laws of the state of Delaware.

3. That on June 1, 1921, the defendant, for value received, by its proper officers and agents, made, executed and delivered its first mortgage twenty-year 8% sinking fund convertible gold bonds numbered M3908 for One Thousand ($1000) Dollars, and D147, D916 and D1289, each D numbered bond for the principal amount of Five Hundred ($500) Dollars, bearing date June 1, 1921, payable to bearer twenty years after said date at the principal office of the Chase National Bank in the city of New York, state of New York, with interest thereon at the rate of eight per

cent per annum payable semi-annually on the first days of June and December of each year commencing with December 1, 1921, and defendant promised to pay all such bonds at maturity and the interest thereon evidenced by interest [fol. 59] coupons attached to said bonds, as they become due.

4. That plaintiff is the owner and holder of said bonds in due course for value, together with the interest coupons attached thereto numbers 20 to 40 inclusive, coupons number 20 being for the interest in the total sum of One Hundred ($100) Dollars, which became due on June 1, 1931 and coupons number 21 being for interest which became due on December 1, 1931 in the sum of One Hundred ($100) Dollars.

5. That due demand has been made for the payment of coupons numbers 20 and 21 on each bond for the total sum of Two Hundred ($200) Dollars upon maturity of each of said coupons, but defendant has refused and neglected to pay said interest coupons or any part thereof and there is now due and owing thereon from the defendant to the plaintiff the sum of Two Hundred ($200) Dollars, with interest on each coupon at the rate of six (6%) per cent per annum from the date each coupon became due as aforesaid.

Second Cause of Action

1. Plaintiff realleges with the same force and effect as if fully set forth at length herein all the allegations of paragraphs 1 to 4 inclusive of the first cause of action.

2. That defendant has, after due demand, refused and neglected to pay the interest on the said bonds which became due on June 1, 1931, and the interest on said bonds which became due on December 1, 1931. On information and belief, upon default in the payment of interest at any time the holder of a bond may declare the entire amount of principal on his bond due and payable. That plaintiff has declared the full amount of the principal of the said bonds due and payable, and has demanded payment of the principal of said bonds from the defendant, but payment thereof has been refused. That there is now due and owing from the defendant to the plaintiff on the principal of said bonds the sum of Two Thousand Five Hundred ($2,500)

[fol. 60] Dollars with interest thereon at the rate of eight per cent from December 1, 1931.

Wherefore plaintiff prays judgment against the defendant on the first cause of action for the sum of Two Hundred ($200) Dollars with interest thereon at the rate of six (6%) per cent per annum on One Hundred ($100) Dollars from June 1, 1931 and with interest thereon at the rate of six (6%) per cent per annum on One Hundred ($100) Dollars from December 1, 1931 and on the second cause of action in the sum of Two Thousand Five Hundred ($2,500) Dollars, with interest at the rate of eight (8%) per cent per annum from December 1, 1931, together with the costs and disbursements of this action.

Gold and McCann, Attorneys for Plaintiff.

State of Wisconsin,
Milwaukee County, ss:

Katherine Gold, being first duly sworn on oath, deposes and says that she is the plaintiff in the above entitled action; that she has read the foregoing complaint and knows the contents thereof and the same is true to her own knowledge.

——— ———.

Subscribed and sworn to before me this — day of January, 1932. ——— ———, Notary Public, Milwaukee County, Wisconsin.

[fol. 61] Exhibit "C" to Petition

State of Wisconsin,
Milwaukee:

Circuit Court

Walter L. Gold, Plaintiff,

against

Consolidated Textile Corporation and Frederick K. Rupprecht, Defendants

State of New York,
County of New York, ss:

Frederick K. Rupprecht, being duly sworn, deposes and says:

1. That he resides in the City, County and State of New York, and is a resident and citizen of said State, and that he is President of the above named defendant, Consolidated Textile Corporation.

2. That said defendant, Consolidated Textile Corporation, is a corporation organized and existing under the laws of the State of Delaware.

3. That said defendant, Consolidated Textile Corporation, is not licensed to do business in the State of Wisconsin, that it has not in fact done business in said State and has no property or place of business, or office or agent in said State.

4. That service of the summons on the deponent personally and on the defendant corporation in this action was attempted to be made upon deponent while he was temporarily in the State of Wisconsin as hereinafter more fully set forth, for the purpose of conferring with Mr. Walter L. Gold, the plaintiff in this action and the person who verified the complaint herein, with reference to an action brought against the defendant Corporation to recover in-
[fol. 62] terest due December 1, 1930, on $9,200 principal amount of the First Mortgage Bonds issued by the defendant Corporation, including bonds alleged to be owned by plaintiff and bonds alleged to be owned by others represented by him as attorney.

5. That deponent was not in the State of Wisconsin for the purpose of transacting business generally for the defendant Corporation in the State of Wisconsin but solely for the purpose of conferring with the said Walter L. Gold as aforesaid, and as more fully set forth hereinafter, and that deponent did not, by going into the State of Wisconsin, submit or intend to submit to the jurisdiction of said State for the purposes of an action or suit against the defendant Corporation or against deponent individually.

6. That the facts relating to the presence of deponent in the State of Wisconsin and the attempted service upon him in this action are as follows:

That said Walter L. Gold represents as attorney the alleged owners of $9,200 principal amount of the First Mortgage Bonds of defendant Corporation, to wit, Lillie Mock, Cecelia Alshuler, Crowley Co., Inc., Katherine Gold

and Walter L. Gold, on whose behalf an action was commenced on January 19, 1931 in the Municipal Court in the City, County and State of New York by one Edythe H. Stegman against the defendant Corporation to *to* recover the interest due on said Bonds on December 1, 1930; that on or about December 28, 1931, a motion, by the plaintiff for a summary judgment in said action was granted, but no judgment was then or has since been entered therein; that prior to the commencement of said action a Committee was formed for the protection of the holders of the First Mortgage Bonds of the defendant Corporation with which [fol. 63] Committee there have been deposited approximately 70% of the issued and outstanding First Mortgage Bonds of the defendant Corporation; that it was and is the deliberate judgment of said Committee and of this deponent that it is not in the interest of the First Mortgage Bondholders of the defendant Corporation to take action at the present time to enforce against the defendant Corporation the remedies of the trustee or the bondholders under the mortgage or otherwise; that in the interest of said Committee and of the defendant Corporation, as well as in his own interest, deponent requested the defendant Corporation's attorneys to seek to arrange an interview with said Walter L. Gold in Milwaukee, Wisconsin, for the purpose of acquainting him with facts which deponent believed should and would dissuade him from entering judgment in the said New York action; that the defendant Corporation's attorneys reported to deponent that they had conferred with one Zinman, the New York attorney in charge of said New York action for said Walter L. Gold, who had stated that he would write to said Walter L. Gold requesting such a conference in Milwaukee and that thereafter the defendant Corporation's said attorneys informed deponent that said Zinman had stated to them that he had so written and that he had received a letter in reply from said Walter L. Gold stating, among other things, that he saw no purpose to be gained by having a conference in Milwaukee; that thereafter deponent and the Secretary of the defendant Corporation and one of the defendant Corporation's attorneys called upon the said Zinman on the afternoon of Monday, January 11, 1932, and after stating to said Zinman the serious consequences to the defendant Corporation and to all holders of its First Mortgage Bonds which would result from the entry of judgment in said action and their desire that an oppor-

tunity be afforded to present the situation to said Walter L. [fol. 64] Gold, deponent stated that he would be in Chicago the latter part of that week and requested said Zinman to communicate by telephone with said Walter L. Gold and request that deponent be permitted to call on said Walter L. Gold in Milwaukee for the purpose of advising him of the situation in an endeavor to persuade him not to have judgment entered in said New York action; that said Zinman agreed that he would so telephone and on the following morning deponent was informed by the defendant Corporation's attorney that said Zinman had informed him that he (Zinman) had telephoned to said Walter L. Gold the desire of deponent to confer with the said Walter L. Gold in Milwaukee for the purposes aforesaid, and that said Walter L. Gold had agreed that he would see deponent in his office in Milwaukee and would withhold entry of judgment in said New York action pending such conference; that pursuant to the engagement so arranged and relying upon the representations and invitations of the said Walter L. Gold aforesaid, deponent went to the City of Milwaukee, Wisconsin, from Chicago and on Thursday, January 14, 1932, at about 10:30 A. M. called at the office of said Walter L. Gold solely for the purpose of discussing with him the said New York action and of presenting to him the facts which deponent believed would persuade the said Walter L. Gold to refrain from entering judgment in said action and to deposit his own bonds and recommend to those whom he represented the deposit of their bonds with said Bondholders' Protective Committee; that deponent was in said office from about 10:30 A. M. to about 12 noon or 12:05 P. M. and attempted to state to said Walter L. Gold the facts with respect to the affairs of the defendant Corporation and the reasons why it was not to his interest nor to the interest of the other bondholders whom he represented to enter judgment in such action but that the said Walter L. Gold stated he was not in- [fol. 65] terested in such facts, that he knew the facts to be otherwise, and said Walter L. Gold clearly had no desire nor intention to discuss with deponent the facts and matters which said Walter L. Gold had been informed deponent was to call to discuss and which deponent had been led to believe said Walter L. Gold would in good faith discuss with him; that just prior to the close of their interview, said Walter L. Gold attempted to serve deponent with the summons in this action and summonses and complaints in six other actions

by the following alleged bondholders as plaintiffs respectively against the defendant Corporation, Walter L. Gold, Lillie Mock, Katherine Gold, Blanche Oster, Cecelia Alshuler, Central Holding Company, Gold Realty Company; that the attempted service of said summonses and complaints was made during said interview at the office of said Walter L. Gold as aforesaid and at the time and place designated by said Walter L. Gold for the said conference, in complete disregard of the confidence and trust reposed in said Walter L. Gold by deponent and while deponent was in the State of Wisconsin and in said Walter L. Gold's office upon his invitation and for the purposes aforesaid; that said summonses and complaints in said action were of such length that they could not have been prepared after deponent's arrival at the office of said Walter L. Gold, and deponent verily believes that said summonses and complaints were prepared prior to the arrival of deponent and that said Walter L. Gold invited and enticed and lured deponent into the State of Wisconsin for the purpose of serving him with the summons in this action and the summonses and complaints in the other actions above referred to.

[fol. 66] 7. That deponent is advised and alleges that the service attempted to be made in this action upon the defendant Corporation and upon deponent individually as aforesaid is void; that such attempted service both as to the defendant Corporation and as to deponent individually constitutes an abuse and misuse of the process of this Court and that to give effect to such attempted service would constitute a violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Frederick K. Rupprecht.

Sworn to before me this 29th day of January, 1932. Commission expires March 30, 1932. B. A. Gunn, Notary Public, New York County. N. Y. Co. Cl'k's No. 368, Reg. No. 20378. (Notarial Seal.)

[fol. 67] EXHIBIT "D" TO PETITION

STATE OF WISCONSIN,
Milwaukee County:

CIRCUIT COURT

KATHERINE GOLD, Plaintiff,

vs.

CONSOLIDATED TEXTILE CORPORATION, Defendant

STATE OF WISCONSIN,
Milwaukee County, ss:

Walter L. Gold, being first duly sworn on oath, deposes and says that he is one of the attorneys for the plaintiff in the above entitled action. That on January 8, 1932, he received a letter from Mr. Samuel Zinman, an attorney at law of the firm of Bernstein & Zinman, 258 Broadway, New York, with whom he was in correspondence about the action of Edythe H. Stegman vs. Consolidated Textile Corporation, which was a suit brought in the municipal court of the city of New York, Borough of Manhattan, Ninth District, for the collection of the sum of $368 interest on bonds issued by Consolidated Textile Corporation, which became due on December 1, 1930, and he was advised in such letter that in that action the plaintiff's motion for summary judgment was granted by the New York court. On the subject of the desire of Consolidated Textile Corporation to send a representative to Milwaukee to see affiant, Mr. Zinman stated in his letter as follows:

"Defendant's attorneys have apparently made some investigation in this matter for they are aware of the fact that you are an attorney and they assume that you have control over the other parties. They are desirous of having one of the Company's representatives go out to Milwaukee for the purpose of conferring with you and possibly persuading you that it is to the best interests of all bondholders that no judgment be entered in this action and that no further proceedings be taken.

"Our consent was requested to having the company's representative see you directly. Naturally, our position was

[fol. 68] that we represent the plaintiff in this action and that even if the matter is to be discussed with the owners of the bonds, you were the owner of but $2,000 of the $10,200 of bonds here involved. Mr. Bisbee was, however persistent in the matter and we finally stated that we would place the matter before you; that we had been retained to go into this matter and that we could see no reason why we should consent to having the defendant discuss the situation with the owners of the bonds.

"Of course, there is nothing to prevent the defendant from sending a representative to see you without our consent and Mr. Bisbee pointed this out to us but we stated that our objection was to having anyone interview you and saying that he is doing so with our consent. We finally arranged that we would write to you giving you the substance of the conversation. Mr. Bisbee requested that we advise you that we have no objection to your interviewing the Company's representative. Needless to say, that is so."

Affiant answered said letter on January 9, 1932, and on that subject wrote as follows:

"I can see nothing gained by having a conference in Milwaukee with the representative of the Consolidated Textile Corporation.

"I am in favor, if you agree, of having you insist upon the entry of judgment for the coupons presently due and for those which have matured since the commencement of suit, and on which suit has not yet been brought."

On January 11, 1932 affiant received a telephone call from Mr. Zinman from New York stating that a representative or officer of the Consolidated Textile Corporation, who claimed to know some friends or relatives of affiant's, was going to call upon affiant in Milwaukee. Deponent then and there stated to Mr. Zinman that he did not believe that anything could be accomplished in such an interview, but that if they (meaning the Consolidated Textile Corporation people) insisted, affiant would have such interview. No appointment was made for any interview, and affiant was not informed as to when any representative of Consolidated Textile Corporation would call upon him in Milwaukee.

On the morning of January 14, 1932, there appeared at affiant's office a gentleman whom deponent had never seen before, and who presented a card reading as follows:

[fol. 69] "Frederick K. Rupprecht

President Consolidated Textile Corporation, 88 North Street, New York."

Mr. Rupprecht introduced himself, and stayed in affiant's office for about two hours. Mr. Rupprecht stated to affiant that he was in Milwaukee to see Mr. Loeffler of Goll and Frank, and Gimbel Bros., who were customers of Consolidated Textile Corporation.

After some discussion of mutual acquaintances in New York, Mr. Rupprecht tried to interest affiant in the sale of Consolidated Textile Corporation's mills at Henderson, Kentucky. A large part of the conversation was devoted by Mr. Rupprecht in discussing the properties of the company at Henderson, the number of spindles at the Henderson plant, that there were people in Kentucky interested in investing some $125,000 in the acquisition of such properties from the Consolidated Textile Corporation, and many other details concerning the company's properties in Henderson, and the reason for the desire of the company to sell this property. Mr. Rupprecht said that his company would be glad to pay affiant well for his services in trying to effect such sale and would pay him a commission if a sale were made.

After such discussion, Mr. Rupprecht asked affiant not to have judgment entered by Mr. Zinman in the New York action of Stegman vs. Consolidated Textile Corporation. Mr. Rupprecht stated that he thought it would be to the interest of Edythe H. Stegman and the bondholders represented by affiant, to have the entry of such judgment postponed. Mr. Rupprecht asked affiant to telephone to Mr. Zinman at New York to delay the entry of judgment and affiant finally consented to do so and did telephone to Mr. Zinman and stated to Mr. Zinman that Mr. Rupprecht was in affiant's office and had asked to have entry of judgment delayed for a little while, and affiant stated to Mr. Zinman that he thought it would be advisable for all concerned to delay the entry of judgment in New York.

[fol. 70] After Mr. Rupprecht had been in affiant's office for about an hour, the summons and complaint in the above entitled action was served upon Mr. Rupprecht and in six other cases of a similar nature, which were actions on bonds

by Walter L. Gold, Katherine Gold, Cecilia Alshuler, Gold Realty Company, Central Holding Company and Lillie Mock vs. Consolidated Textile Corporation, and the summons in an action of Walter L. Gold v. Consolidated Textile Corporation and Frederick K. Rupprecht. Mr. Rupprecht remained in affiant's office for about an hour after such service, and attempted to persuade deponent to withdraw the service made upon him, stating that he would cause to be paid all the unpaid interest due on the bonds involved in such actions, including the interest coupons involved in the Stegman action in New York and asked that affiant agree to do nothing with reference to further prosecution of the actions for three or four months with a view of their possible adjustment. Mr. Rupprecht requested deponent to writ him a letter or make some definite offer covering all the actions, which he stated he would submit to the parties interested in New York.

Affiant has read the affidavit of Mr. Rupprecht attached to the special appearance motion in the above entitled action. Affiant told Mr. Rupprecht that none of the holders of the bonds involved in the aforementioned actions commenced in the circuit court of Milwaukee County deposited his, her or its bonds with any bondholders' committee of Consolidated Textile Corporation and gave him the reasons therefor. Affiant stated to Mr. Rupprecht that he made some investigation of the affairs of the Consolidated Textile corporation and obtained financial reports upon the company and its subsidiary, Consolidated Selling Company, Inc., and that he became convinced that the purpose of organizing the bondholders' committee was to execute a plan whereby the Chase National Bank and other banks, who affiant was informed held about $6,500,000 worth of notes of Consolidated Textile Corporation which are subse-
[fol. 71] quent to the first mortgage bonds, might share in the distribution of the proceeds of the property mortgaged to secure the first mortgage bonds; that the attorneys representing the bondholders' committee (Messrs. Rushmore, Bisbee & Stern) are the attorneys for said Chase National Bank; that affiant believes that the property securing the first mortgage bonds is worth more than the amount of bonds outstanding in the sum of $2,750,000 which was reduced from a bond issue of $5,000,000. Affiant further stated to Mr. Rupprecht that he discovered that Consoli-

dated Textile Corporation had organized Consolidated Selling Company, Inc. as the selling agent for Consolidated Textile Corporation and that in a report, by R. G. Dun & Company, a mercantile agency, under date of August 13, 1931, on Consolidated Textile Corporation, which report affiant believed to be correct, it was reported as follows:

"Consolidated Selling Co. Inc. was organized under Delaware laws August 28, 1924, with an authorized capital consisting of $2,000,000. First Preferred stock, par value $100 and bearing 8% interest, $1,000,000 7% Second Preferred, par value $100 and 5,000 shares of no par Common Stock. The outstanding First Preferred of $800,000 was reduced during 1931 to $250,000 by August and will probably be further retired. This class of Preferred has been owned not by the subject company but by outsiders and dividends have been paid to date. The remaining authorized stock of Consolidated Selling Co. Inc., fully issued, is owned by Consolidated Textile Corporation and has been pledged under the stock indenture executed in connection with the five year Secured Gold Notes."

Affiant stated to Mr. Rupprecht that the said payment of $550,000 in retirement of the preferred stock of Consolidated Selling Company, Inc. was made in 1931, which was after Consolidated Textile Corporation had defaulted in the payment of interest upon its first mortgage bonds on December 1, 1931, and that affiant believed that such expenditure of the sum of $550,000 was in violation of the rights of the bondholders inasmuch as Consolidated Selling Company, Inc. is wholly owned by Consolidated Textile Corporation and is merely an agent of Consolidated Textile Corporation. Affiant stated to Mr. Rupprecht that he was convinced that the bondholders' committee was merely [fol. 72] working for the interests of certain insiders of Consolidated Textile Corporation and the banks who hold junior obligations of Consolidated Textile Corporation, not for the benefit of the bondholders.

Affiant did not invite Mr. Rupprecht or any other representative of Consolidated Textile Corporation to come to Milwaukee, but on the contrary attempted to dissuade them from doing so because affiant had no desire to be interviewed on the subject. Affiant did not talk with any repre-

sentative of Consolidated Textile Corporation at any time before Mr. Rupprecht came to affiant's office, and did not lead any one to believe that he desired to discuss anything with any representative of Consolidated Textile Corporation. Affiant did not in any way or manner invite, entice or lure said Mr. Rupprecht into the state of Wisconsin, but on the contrary the Consolidated Textile Corporation people insisted upon sending some one to see affiant after he had discouraged the idea and distinctly stated that he saw nothing to be gained by any interview upon the subject of the bonds.

When Mr. Zinman telephoned to affiant on January 11, 1932 as aforesaid, and affiant gave him his reply as aforesaid, affiant did not have in mind the commencement of any actions against Consolidated Textile Corporation. It was not until the following day, to-wit: on January 12, 1932, that it occurred to affiant that if Consolidated Textile Corporation did send such officer or agent to Wisconsin as would subject it to service of process in Wisconsin, that he would have him served with process.

Thereupon, on January 12, 1932 he directed Mr. Morris Karon, an attorney at law associated with affiant's firm, to commence the preparation of the summons and complaint in the above entitled action and the other actions aforementioned.

[fol. 73] Affiant has been informed that through Consolidated Selling Co., Inc., which is the selling agency for Consolidated Textile Corporation and is a subsidiary wholly controlled by Consolidated Textile Corporation and is an agent of Consolidated Textile Corporation, the Consolidated Textile Corporation sells goods in Wisconsin, to-wit: to Gimbel Bros. in Milwaukee and Sears, Roebuck & Co., in Milwaukee.

Walter L. Gold.

Subscribed and sworn to before me this 19th day of February, 1932. Edna Crowley, Notary Public, Milwaukee County, Wisconsin.

[fol. 74] EXHIBIT "D-1" TO PETITION

STATE OF WISCONSIN,
Milwaukee County:

CIRCUIT COURT

KATHERINE GOLD, Plaintiff,

vs.

CONSOLIDATED TEXTILE CORPORATION, Defendant

STATE OF WISCONSIN,
Milwaukee County, ss:

Morris Karon, being first duly sworn on oath, deposes and says that he is an attorney at law associated with the firm of Gold and McCann, attorneys for the plaintiffs in the above entitled action; that on January 12, 1932, Mr. Walter L. Gold asked affiant to prepare summons and complaint in the above entitled action and in the actions of Walter L. Gold, Katherine Gold, Cecilia Alshuler, Gold Realty Company, Central Holding Company and Lillie Mock vs. Consolidated Textile Corporation, and to prepare a summons in an action of Walter L. Gold vs. Consolidated Textile Corporation and Frederick K. Rupprecht. That affiant commenced the preparation of said summonses and complaints in the said actions on January 12, 1932.

Morris Karon.

Subscribed and sworn to before me this 19th day of February, 1932. Edna Crowley, Notary Public, Milwaukee County, Wisconsin.

[fol. 75] EXHIBIT "E" TO PETITION

STATE OF WISCONSIN,
Milwaukee County:

CIRCUIT COURT

No. 117,880

KATHERINE GOLD, Plaintiff,

vs.

CONSOLIDATED TEXTILE CORPORATION, Defendant

Order

The motion of the defendant, upon special appearance in the above entitled action, to set aside the service of the summons and for dismissal of the action having come on for hearing before the court above named in that branch thereof presided over by the Honorable John J. Gregory, Circuit Judge presiding, in the court room of the said court in the Court House, in the city and county of Milwaukee, state of Wisconsin, on the 9th day of April, 1932, plaintiff appearing by Gold and McCann represented by Morris Karon, her attorneys, and the defendant appearing by Bottum, Hudnall, Lecher, McNamara & Michael by Suel O. Arnold, its attorneys, and the court having considered the affidavits filed and the arguments of counsel and the briefs submitted, and being duly advised in the premises, and defendant having in open court abandoned the claim that Frederick K. Rupprecht was enticed into the state of Wisconsin,

Now, therefore, the court finds that the summons and complaint herein were properly served upon the defendant and the court thereby obtained jurisdiction over the person of the defendant in this action;

It is therefore ordered that the said motion of the defendant to set aside and vacate the service of the summons and for the dismissal of the action herein be and the same hereby is denied with ten dollars ($10) motion costs in favor of the plaintiff.

By the Court:

John J. Gregory, Circuit Judge.

Dated June 30, 1932.

[fol. 76] EXHIBIT "F" TO PETITION

STATE OF WISCONSIN,
Milwaukee County:

CIRCUIT COURT

KATHERINE GOLD, Plaintiff,

vs.

CONSOLIDATED TEXTILE CORPORATION, Defendant

At a regular term of the Circuit Court for Milwaukee County, begun and held at the Court House, in the City of Milwaukee, Milwaukee County, Wisconsin, on the first Monday in July, 1932, and on a subsequent day in said term, towit, the 29th day of August, 1932, in that branch of said court presided over by the Hon. John J. Gregory, Circuit Judge.

The order to show cause of the defendant why the defendant should not be granted a re-hearing and review of the order hereinbefore entered on the 30th day of June, 1932, having come on to be heard before the court, in that branch thereof presided over by the Hon. John J. Gregory, Circuit Judge, the plaintiff appearing by Gold and McCann, her attorneys, and the defendant appearing specially for the sole purpose of moving for a rehearing and review of said order by Bottum, Hudnall, Lecher, McNamara & Michael, its attorneys, and it appearing to the court that the defendant did not have notice or knowledge of said order of June 30, 1932 until the 12th day of July, 1932, and that on the 1st day of July, 1932 judgment for default of answer was entered as prayed for in said complaint, and it further appearing that justice requires that the defendant should be granted a period of five (5) days within which to enter a general appearance, demur, answer or otherwise plead to the plaintiff's complaint,

[fol. 77] Now, therefore, on the court's own motion,

It is ordered that the said judgment, dated July 1, 1932, be and the same is hereby vacated and set aside.

It is further ordered that the defendant be given a period of five (5) days from the date of this order within which to

enter a general appearance, demur, answer or otherwise plead to the plaintiff's complaint or to take further proceedings in said action, and that no judgment shall be taken by the plaintiff until the expiration of said five (5) day period.

It is further ordered that in case the defendant shall not enter a general appearance, demur, answer or otherwise plead to the said complaint within a period of five (5) days from the date of this order, judgment may be entered by the plaintiff for default in answer at any time after the expiration of said five (5) day period.

Dated Milwaukee, Wisconsin, August 30, 1932.

By the Court:

John J. Gregory, Judge.

[fol. 78] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN, AUGUST TERM, 1932

State No. 22

STATE EX REL. CONSOLIDATED TEXTILE CORPORATION, a Corporation, Petitioner,

vs.

JOHN J. GREGORY, Judge of the Circuit Court of Milwaukee County, Respondent

ALTERNATIVE WRIT OF PROHIBITION—Filed Sept. 27, 1932

The State of Wisconsin to Honorable John J. Gregory, Judge of the Circuit Court of Milwaukee County, Wisconsin, and Katherine Gold, Greeting:

Whereas it has been made to appear to our Court, upon the verified petition of Consolidated Textile Corporation, as follows:

(1) That your petitioner is a corporation organized under the laws of the State of Delaware with its office and principal place of business in the city, county and state of New York.

(2) That Frederick K. Rupprecht is the President of your petitioner, and is a resident of the city, county and state of New York.

(3) That on the 14th day of January, 1932, a summons, a copy of which, marked exhibit "A", is hereto annexed and forms a part hereof as if fully set forth herein, was served on Frederick K. Rupprecht, whereby your petitioner was summoned to appear in the Circuit Court for Milwaukee County to answer the plaintiff's complaint, copy of which, marked exhibit "B", is hereto annexed and forms a part hereof as if fully set forth herein.

[fol. 79] (4) That in pursuance to said summons, your petitioner, by Bottum, Hudnall, Lecher, McNamara & Michael, its attorneys, appearing specially for the sole purpose of moving to vacate and set aside the service of the summons and to dismiss said action on the ground that the Court did not have jurisdiction over said action and on the 13th day of February, 1932, attended before the Court and moved to vacate and set aside the service of the summons and to dismiss said action on the ground that the Court had no jurisdiction over said action for the following reasons: That your petitioner was a corporation organized and existing under and by virtue of the laws of the State of Delaware; that it was not licensed to do business in the State of Wisconsin; that it had not in fact done business in the State of Wisconsin, and that it had no property or place of business or office or agent in the State of Wisconsin; that Frederick K. Rupprecht, president of your petitioner, was a resident of the city, county and state of New York; that service of said summons on the said Frederick K. Rupprecht was made while he was temporarily within the city and county of Milwaukee and State of Wisconsin; all of which said facts and circumstances were more particularly set forth in the affidavit of the said Frederick K. Rupprecht which is now on file in the Circuit Court for Milwaukee County, and constituted a part of the motion of your petitioner to vacate and set aside the service of the summons and to dismiss said action, copy of which affidavit, marked Exhibit "C", is attached hereto and forms a part hereof as if fully set forth herein; that the service of summons on a foreign corporation was controlled by the Statutes of the State of Wisconsin; that the only Statute in

Wisconsin which in any manner might authorize service of [fol. 80] said summons was Subsection (13) of Section 262.09 of the Wisconsin Statutes; that the service of said summons was not authorized under Subsection (13) of Section 262.09 of the Wisconsin Statutes; that if the service of said summons was authorized under Subsection (13) of Section 262.09 of the Wisconsin Statutes, said Subsection (13) of Section 262.09 of the Wisconsin Statutes was unconstitutional in that it deprived your petitioner of its property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States; that the service of said summons under the said circumstances, as hereinbefore related, deprived your petitioner of its property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

(5) That the plaintiff in said action in opposition to said motion to vacate and set aside the service of summons and to dismiss said action, filed affidavits of Walter L. Gold and Morris Karon, which said affidavits are now on file in the Circuit Court for Milwaukee County, as a part of the file in said action, copies of which affidavits, marked respectively Exhibits "D" and "D-1", are attached hereto and form a part hereof as if fully set forth herein; that said affidavits are made a part of this petition at the request of the attorney representing the plaintiff in said action to obviate the necessity of filing a return to the alternative writ of prohibition to be issued hereunder by the Supreme Court.

(6) That the sole purpose of the said Frederick K. Rupprecht in coming to Milwaukee on the said 14th day of January, 1932, was to confer with the said Walter L. Gold [fol. 81] and was not for the purpose of transacting business for your petitioner; that the said Frederick K. Rupprecht did not on the 14th day of January, 1932, or at any other time, confer with Gimbel Brothers in the City of Milwaukee or State of Wisconsin or with any other mercantile establishment in the City of Milwaukee.

(7) That your petitioner has not at any time transacted any business in Wisconsin in any manner whatsoever; that the Consolidated Selling Company is a corporation organ-

ized under the laws of the State of Delaware with its office and principal place of business in the City, County and State of New York; that your petitioner owns all of the stock of the said Consolidated Selling Company; that said Consolidated Selling Company is not licensed to do business in the State of Wisconsin and that the only business conducted by the Consolidated Selling Company in Wisconsin is interstate in character and is conducted by means of nonresident agents who solicit orders in Wisconsin which are accepted in New York City.

(8) That the cause of action set forth in the plaintiff's complaint a copy of which marked Exhibit "B" is attached hereto and forms a part hereof shows upon its face that the cause of action therein alleged arose out of a transaction outside the State of Wisconsin; that the said bonds referred to in said complaint were a portion of an issue of twenty year eight per cent sinking fund convertible gold bonds which were issued by your petitioner; that the principal and interest on the said bonds are payable at the principal [illegible]ce of the Chase National Bank in the City, County and State of New York; that no part of the transaction in which said bonds were issued by your petitioner took place in the State of Wisconsin; that if Subsection (13) of Sec-
[fol. 82] tion 262.09 of the Statutes authorized service on your petitioner, Subsection (13) of Section 262.09 violates the Fourteenth Amendment to the Federal Constitution by depriving your petitioner of its property without due process of law.

(9) That the said action in which the said Katherine Gold is plaintiff and Consolidated Textile Corporation is defendant, is one of seven actions now pending in the Circuit Court for Milwaukee County for the recovery of principal and interest on bonds issued by your petitioner, and in which your petitioner is defendant; that the names of the plaintiffs in said actions are as follows: Cecilia Alshuler, Blanche Oster, Lillie Mock, Walter L. Gold, Gold Realty Company, a corporation, and Central Holding Company, a corporation; that pursuant to agreement with counsel representing said plaintiffs, the decision of this Court in this proceeding shall be controlling in all of said actions.

(10) That the hearing on said motion to vacate and set aside the service of said summons and to dismiss said action

was postponed from time to time until the 9th day of April, 1932, at which time said motion was argued before the said Circuit Court for Milwaukee County in that branch presided over by the Honorable John J. Gregory, Circuit Judge presiding.

(11) That the said the Honorable John J. Gregory, notwithstanding said motion and objection, did proceed to hear said cause and refuse to dismiss the same, and on or about the 30th day of June, 1932, decided that he had jurisdiction over said action, and on said day entered an order, a copy of which, marked Exhibit "E," is attached hereto and forms a part hereof as if fully set forth herein, dismissing the said motion of your petitioner to vacate and set aside the service of said summons and to dismiss said action; that thereafter and on the 1st day of July, 1932, judgment was entered [fol. 83] in favor of the plaintiff and against the defendant, your petitioner, as prayed for in said complaint; that neither your petitioner nor its attorneys, Bottum, Hudnall, Lecher, McNamara & Michael, had knowledge or notice of said order dated June 30, 1932, or of said judgment dated July 1, 1932, until the 12th day of July, 1932, at which time the attorneys for the plaintiff served notice of entry of order and notice of entry of judgment on the attorneys for your petitioner; that immediately thereafter said attorneys for the Consolidated Textile Corporation communicated with the Honorable John J. Gregory, Circuit Judge, who was on his vacation at Sayner, Wisconsin, requesting said Judge to sign an order to show cause why a rehearing and review of said order of June 30, 1932, should not be granted; that on the 28th day of July, 1932, an order to show cause signed by the said the Honorable John J. Gregory, returnable on the 29th day of August, 1932, the date on which said Judge would return from his said vacation, was served on the attorneys for the plaintiff; that on the 29th day of August, 1932, said order to show cause came on to be heard before the Circuit Court for Milwaukee County, the said Honorable John J. Gregory, Circuit Judge, presiding, who thereupon announced in open Court his decision that by reason of the fact that neither your petitioner nor its said attorneys had knowledge or notice of said order of June 30, 1932, prior to the entry of the judgment on July 1, 1932, the Court on its own motion would set aside said judgment of July 1, 1932, and would stay

entry of judgment for a period of five (5) days thereafter to permit your petitioner to enter a general appearance, to demur, to answer or otherwise plead to the plaintiff's complaint; that on the 30th day of August, 1932, an order was entered in accordance with the said oral decision of the said court, a copy of which, marked Exhibit "F," is [fol. 84] hereto annexed and forms a part hereof as if fully set forth herein; that pursuant to said order your petitioner was required to make a general appearance, to demur, to answer or otherwise plead to the plaintiff's complaint on or before September 6, 1932, or in the alternative to permit judgment to go against your petitioner by default.

(12) That your petitioner has no speedy or adequate remedy by appeal or otherwise.

Nevertheless you, the said John J. Gregory, Judge of the Circuit Court of Milwaukee County, and Katherine Gold, contriving unjustly to oppress the said Consolidated Textile Corporation, as it is alleged, by proceeding in said action and are about to enter judgment for default in answer against the said Consolidated Textile Corporation notwithstanding the fact that the Circuit Court for Milwaukee County has no jurisdiction, against the laws and customs of our State and to the manifest injury and damage of the said Consolidated Textile Corporation.

We therefore, being willing that the laws and customs of our state should be observed and that all good and faithful citizens should in no wise be oppressed, do command you the said John J. Gregory, Judge of the Circuit Court of Milwaukee County, and Katherine Gold, to desist and refrain from any further action in said proceedings specified in said relation and herein, until the further order of this Court thereon; and that on the 14th day of October, 1932, at nine o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, in the court room of the Supreme Court of the State of Wisconsin in the Capitol at Madison, Wisconsin, you show cause before our said court why you should not be absolutely restrained from any further proceedings in the said action.

[fol. 85] And have you then and there this Writ.

Witness the Honorable Marvin B. Rosenberry, Chief Justice of our said Court, this 27th day of September, 1932.

Arthur A. McLeod, Clerk. (Seal Supreme Court of Wisconsin.)

The within Writ allowed to issue this 27th day of September, 1932.

Marvin B. Rosenberry, Chief Justice.

Exhibit "A".—Summons (same as exhibit "A" attached to petition).

Exhibit "B".—Complaint (same as exhibit "B" attached to petition).

Exhibit "C".—Affidavit of Frederick K. Rupprecht (same as exhibit "C" attached to petition).

Exhibit "D".—Affidavit of Walter L. Gold (same as exhibit "D" attached to petition).

Exhibit "D-1".—Affidavit of Morris Karon (same as exhibit "D-1" attached to petition).

Exhibit "E".—Order overruling motion to quash (same as exhibit "E" attached to petition).

Exhibit "F".—Order vacating and setting aside judgments (same as exhibit "F" attached to petition).

[fol. 86] Here appears motion to quash alternative writ of prohibition.

[fols. 87 & 88] Here appears admission of service of petition for writ of prohibition, alternative writ of prohibition, and motion to quash.

[fol. 89] [File endorsement omitted]

In Supreme Court of Wisconsin

[Title omitted]

Return to Alternative Writ of Prohibition—Filed Oct. 12, 1932

I, John J. Gregory, Judge of the Circuit Court of Milwaukee county, Wisconsin, the respondent above named, do hereby respectfully make this answer to the petition of

Consolidated Textile Corporation praying for writ of prohibition to issue out of this court in the above entitled cause, and do hereby respectfully make return to the alternative writ of prohibition issued out of the above named court in the above entitled cause, as follows:

1. That exhibits "A" and "B" attached to the aforesaid petition and alternative writ of prohibition appear to be true and correct copies of the summons and complaint in said action.

2. That exhibit "C" attached to said petition and alternative writ appears to be a true and correct copy of the affidavit of Frederick K. Rupprecht filed by the defendant upon defendant's motion for vacation of the service of process in said action.

[fol. 90] 3. That Exhibit "D" attached to said petition and alternative writ appears to be a true and correct copy of the affidavit of Walter L. Gold filed by the plaintiff upon the defendant's motion for vacation of the service of process in said action.

4. That exhibit "D-1" attached to the petition for writ of prohibition appears to be a true and correct copy of the affidavit of Morris Karon filed by the plaintiff upon the defendant's motion for vacation of the service of process in said action.

5. That exhibit "E" attached to said petition and alternative writ appears to be a true and correct copy of the order made by the respondent in the said action denying the said defendant's motion to set aside and vacate the service of the summons in said action.

6. That exhibit "F" attached to said petition and alternative writ appears to be a true and correct copy of the order made by the respondent vacating the default judgment rendered in said action after the entry of the said order denying the vacation of the service of process, and granting the defendant a period of five (5) days within which to plead to the complaint in said action.

7. Respondent further respectfully shows to the court that the said defendant Consolidated Textile Corporation,

by its attorneys, in open court withdrew its alleged claim that Frederick K. Rupprecht, president of said defendant corporation, was enticed into the state of Wisconsin for the purpose of serving process upon the defendant corporation within this state.

8. Respondent further respectfully shows to the court that from the affidavit of said Frederick K. Rupprecht, president of said defendant Consolidated Textile Corpora- [fol. 91] tion, it clearly appeared to the respondent that said Rupprecht as president of the said corporation insisted, against the objection of plaintiff's attorney, Walter L. Gold, upon coming to Wisconsin for the purpose of attempting to settle a controversy between said Katherine Gold, a holder of bonds of Consolidated Textile Corporation, and Consolidated Textile Corporation, and controversies between said Consolidated Textile Corporation and six other bondholders, who likewise held said corporation's bonds, to-wit, Central Holding Company, Gold Realty Company, Walter L. Gold, Lillie Mock, Cecelia Alshuler and Blanche Oster, who are all residents of Wisconsin. That the claims of said seven bondholders against Consolidated Textile Corporation were based on bonds issued by said Consolidated Textile Corporation and sold to said bondholders for value, and said Consolidated Textile Corporation had defaulted in the payment of interest and principal of said bonds and the total claims of the said seven bondholders exceeded the sum of $15,000.

9. Respondent further respectfully shows to the court that upon the argument of said defendant's motion to set aside the service of process in said cases, said defendant, by its attorneys, assumed that the statements contained in the affidavit of Walter L. Gold were true. I found that all the statements contained in the affidavits of Walter L. Gold and Morris Karon were true.

10. Respondent further respectfully shows to the court that I found that the action of Edythe H. Stegman vs. Consolidated Textile Corporation, commenced in the Municipal Court of the City of New York, was not brought on behalf of Katherine Gold, plaintiff in this action, or the other bondholders aforementioned, but was solely in the name of said Edythe H. Stegman to recover $368 on bearer interest

coupons for interest due on bonds issued by Consolidated Textile Corporation, and a motion for summary judgment [fol. 92] had been granted in favor of said Edythe H. Stegman in that action, and that said action of Edythe H. Stegman had nothing to do with this action, or the actions of the other six bondholders aforementioned. Said Stegman action involved different interest coupons from those involved in the Wisconsin actions.

11. Respondent further shows to the court that upon full and fair consideration of the affidavits of both the plaintiff and the defendant upon the said motion, I found that said Frederick K. Rupprecht, president of said defendant corporation, was sent by said defendant corporation to Wisconsin to attempt to settle the seven individual claims of Wisconsin bondholders against said defendant corporation and at the time of the service of process in the above case upon him, he was in Wisconsin on the business of said defendant corporation, and that he was then engaged in conducting business of said corporation in Wisconsin; that he was then also in Wisconsin on the business of said corporation with several of its customers in Wisconsin; and that in addition said defendant corporation had been doing business in Wisconsin through a wholly owned and controlled subsidiary, Consolidated Selling Company, Inc. Upon those facts, I found that the summons and complaint in said cause were properly served upon the defendant corporation. I could not lawfully or conscientiously have decided the said motion to vacate the service of the summons and complaint in favor of the defendant. The determination of said motion involved the determination of questions of fact and law and I concluded that my determination was within my power and jurisdiction as a judge of the said circuit court, and in conscience and in law I concluded that it was my duty to decide that the service of process upon the defendant was valid and that the court obtained jurisdiction over the person of the defendant in said action.

All of which is respectfully submitted.

(Signed) John J. Gregory.

[fol. 93] *Duly sworn to by John J. Gregory. Jurat omitted in printing.*

[fol. 94] The foregoing return is hereby adopted by the undersigned, Katherine Gold, named in the alternative writ of prohibition aforementioned and will be relied upon as a sufficient cause why said alternative writ of prohibition should not be made absolute herein.

(Signed) Gold & McCann, Attorneys for Katherine Gold.

[fols. 95-98] Here appears motion to withdraw motion to quash alternative writ of prohibition and supporting affidavit.

[fol. 99] IN SUPREME COURT OF WISCONSIN

[Title omitted]

STIPULATION AS TO WITHDRAWAL OF MOTION TO QUASH, ETC.—Filed Oct. 14, 1932

It is hereby stipulated between counsel representing the respective parties, Bottum, Hudnall, Lecher, McNamara & Michael appearing for the said Petitioner, and Gold & McCann appearing for the said Respondents, that the Motion to Quash the Alternative Writ herein filed on behalf of Catherine Gold is hereby withdrawn, and that the return of the respondent, Hon. John J. Gregory, which has been adopted by the respondent, Katherine Gold, shall be substituted in lieu of said Motion to Quash; that there shall be added the following words after the word "that" on the last page of said return of the Hon. John J. Gregory:—"Mr. Rupprecht told Mr. Gold that" he was then also in Wisconsin on the business of said corporation with several of its customers in Wisconsin; that the Petitioner hereby demurs to said return.

Dated October 14th, 1932.

Bottum, Hudnall, Lecher, McNamara & Michael, Attorney- for Petitioner. Gold & McCann, Attorney- for Respondents.

[File endorsement omitted.]

[fol. 100] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ARGUMENT AND SUBMISSION—Oct. 14, 1932

And now at this day came the parties herein, by their attorneys, and this cause having been argued by Suel O. Arnold, Esq., for the said plaintiff, and by Morris Karon, Esq., for the said defendant, and submitted, and the Court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

Stipulated in open court that the motion to quash the alternative writ be withdrawn and that the return of Hon. John J. Gregory, which has been adopted by the respondent Gold, shall be substituted in lieu of said motion to quash.

[fols. 101 & 102] IN SUPREME COURT OF WISCONSIN

STATE ex Rel. CONSOLIDATED TEXTILE CORPORATION, Plaintiff,

vs.

HON. JOHN J. GREGORY, Judge of the Circuit Court of Milwaukee County, Respondent

Original Action

Opinion by Justice Fairchild

JUDGMENT—Nov. 9, 1932

This cause came on to be heard on the demurrer to the return to the alternative writ of prohibition and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the demurrer to the return, be, and the same is hereby, overruled, and that the writ be, and the same is hereby, denied.

And it is further ordered that the temporary restraining order be, and the same is hereby, dissolved.

[fol. 103] IN SUPREME COURT OF WISCONSIN

State No. 22, August Calendar, 1932

STATE ex Rel. CONSOLIDATED TEXTILE CORPORATION, Petitioner,

v.

JOHN J. GREGORY, Judge of the Circuit Court for Milwaukee County, Respondent

Prohibition to the Circuit Court for Milwaukee County, John J. Gregory, Judge. Writ Denied

OPINION—Filed Nov. 9, 1932

Petition for a writ of prohibition filed August 31, 1932, pursuant to leave to prevent further proceedings in an action pending in the circuit court for Milwaukee County, wherein Katherine Gold is plaintiff and Consolidated Textile Corporation, defendant.

The Consolidated Textile Corporation is a corporation organized under the laws of the state of Delaware with its office and principal place of business in New York City. Service of the summons was made upon Frederick Rupprecht, the president thereof, while he was in the city of Milwaukee for purpose of a conference with the attorneys of Mrs. Gold and of six other bondholders, to attempt to settle the controversy between such bondholders and the Consolidated Textile Corporation. That the claims of such seven bondholders were based on bonds issued by the said petitioner and sold to such persons for value. The petitioner had defaulted in the payment of interest and principal on said bonds. There was a special appearance in the circuit court action and motion to set aside the service of the process. The trial court determined upon the affidavits [fol. 104] submitted that the said Rupprecht president of the petitioner, was sent by it to Wisconsin to settle the seven individual claims of the Wisconsin bondholders against said corporation, one of which is the basis of the suit; that at the time of the service of the summons the said Rupprecht was in Wisconsin on business of said petitioner and was engaged in conducting such business, and

"in addition said defendant corporation had been doing business in Wisconsin through a wholly owned and controlled subsidiary, Consolidated Selling Company, Inc." It appears that the Consolidated Textile corporation owned all of the stock of the Consolidated Selling Company, which is a corporation organized under the laws of the state of Delaware with its office and principal place of business in the city, county and state of New York. The Consolidated Selling Company is not licensed to do business in the state of Wisconsin so that the business conducted by it in the state is interstate in character and is carried on by means of nonresident agents soliciting orders in Wisconsin accepted in New York City.

Upon the facts the trial court held that the summons and complaint were properly served and denied the motion to dismiss. The matter was brought here by petition and further proceedings in the circuit court stayed.

[fol. 105] FAIRCHILD, J.:

Our law treats as present within our boundaries a foreign corporation when it is doing business here; and provision is made for service of process upon such a corporation, as the circumstances may warrant, either by service upon the secretary of state in the manner provided by sec. 226.02, when the cause of action arises out of the business transacted within the state or when the defendant has property here, or upon an agent having charge of or conducting any business for such corporation within the state, or, as material in this case, by service upon an officer who is within the state for the purpose of transacting business for the corporation, and who is vested with authority to transact such business within the state; but the service provided for can be made only when such corporation has property within the state or the cause of action arose within the state, or the cause of action exists in favor of a resident of the state. The validity of the service on a foreign corporation by serving process on an agent or secretary of state may depend on a showing of a continuous course of business, while service upon its president or other officer designated by statute through and by whom the corporation has entered the state for a special and for its own peculiar purpose, even though it amounts to a single transaction, may

be perfectly good. It is perceived that the statute does not constitute a single transaction of an isolated nature a sufficient disclosure of the corporate presence to support a service on an agent or secretary of state, Penn Collieries v. McKeever, 183 N. Y. 98, 75 N. E. 935, 2 L. R. A. n. s. 127, while it does provide for such service on the president or other proper officer if in the state for the purposes of a corporation, when the cause of action exists in favor of a resident of the state and arises out of the matter, to control [fol. 106] which the corporation has come within the state. Under one mode of service, for the purpose of discovering the presence of the corporation, the inquiry involves the extent of business done, under the other we are concerned only with the question as to whether the corporation has so acted as to manifest its presence in the person of its officers to the extent that we may say, it was here at the time and subject to service of process. As was said, although with relation to a different state of facts, in opinion by Mr. Justice Cordoza in Tauza v. Susquehanna Coal Co., 220 N. Y. 259, 267: "Activities insufficient to make out the transaction of business, with the meaning of those statutes, may yet be sufficient to bring the corporation within the state so as to render it amenable to process."

The plaintiff whose attempt to secure service is challenged in this proceeding is a resident of the state of Wisconsin. It is conceded that the president of the defendant corporation came into this state in an attempt to accomplish a result in connection with the matter sued on which would be beneficial to the defendant in that action because of the emergency in which it found itself after its default on its bonds. A foreign corporation is present in this state when an officer thereof, vested with authority, is here transacting business for it. The corporation under such circumstance is not merely represented for its own purpose, but it is actually here, and it must accept the plain and unavoidable consequence of being held to be within the jurisdiction of our courts. Mr. Justice Dodge in Fond du Lac C. & B. Co. v. Hemmingsen, 141 Wis. 70, 123 N. W. 640, speaking for the court said: "Although our statute may in terms authorize a suit against a foreign corporation whenever the plaintiff resides in this state and the summons can be served upon some officer or agent of the corporation

those statutes must be ineffective to give jurisdiction unless [fol. 107] the presence of such officer or agent within our borders amounts to presence of the corporation, * * *. It is however uniformly recognized that when a person, corporate or natural, does place itself within our territorial limits, jurisdiction over his or its person may be obtained to adjudicate personal liabilities to such extent as said statutes may authorize."

Petitioner has called our attention to International Harvester Co. v. Kentucky, 234 U. S. 579, Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U. S. 516, James-Dickensen Co. v. Harry, 273 U. S. 119, and other cases of similar import which do support its contention that the corporation was not so within the state as to be subject to service of process unless they are distinguishable from the case at bar. International Harvester Co. v Kentucky, supra, was one in which service was attempted upon an agent in a state where the corporation had expressly refused to be present but did continue doing business there to a considerable extent and therefore service was held good In the Rosenberg Bros. & Co. Inc. v. Curtis Brown Co. case supra, the president of the foreign corporation entered New York state for the purpose of purchasing goods. The question there was whether at the time of the service of process it was doing business within the state of New York in such manner and to such extent as to warrant the inference that it was present there. The Supreme Court of the United States held that it was not so situated by reason of what it had done as to be subject to jurisdiction in New York.

While it may be a close question, it is quite obvious that a corporation sending its agent, although its president, into another state to purchase articles might not go with him, and would therefore be in a very different situation so far as jurisdiction over it is concerned by the local courts [fol. 108] from that in which the petitioner here is, for here the petitioner deliberately entered the state for the purpose of negotiating with reference to the very matter out of which the suit arises. As we understand the James-Dickensen Co. case so far as it relates to this question, it is distinguishable by reason of the fact that special authority to take the corporation into Illinois relative to business sued

upon, was lacking. While the Wisconsin rule must yield to the effect of the decisions referred to, and although our rule may be truly said to be close to the line marked by these decisions, we feel that under the distinctions pointed out, it ought still to control us as to the presence of a corporation under the circumstances disclosed in this record. In the cases relied upon by the petitioner the officer or agent appearing in the foreign state came there with powers so limited that there is good reason for saying the corporation was not present. It seems that the holding would not be proper where the corporation sends into a neighboring state its president for the purpose of winding up, compromising or settling a matter in difference between it and a resident of that state, having conferred on him full power and authority in that particular. Were the balance due in favor of the foreign corporation, it could appeal to the local courts to enforce its rights.

A corporation is by law given a character which amounts in a legal and limited sense to the image or equivalent of an individual. It is limited by the manner of its creation and the practical methods it must conform to in doing its business, but it may contract, sue, defend, and generally carry on the business for which it is organized. In the nature of things it must act through persons who represent it. There is just as definitely a group will and ability to form a plan or intention to act as is found in an individual. In order to avoid confusion and to prevent imposition the corporation's domicile and the place where it may be said to be [fol. 109] found are fixed as definitely as can be and at the same time prevent undue advantage and injustice. The effect of our legislation with relation to jurisdiction over foreign corporations amounts to this, a corporation is found within the state when its president or other chief officer, vice president, secretary, cashier, treasurer, director or managing agent is within the state and conducting business for such corporation; it is here for the purposes relating to the business it has come to transact. Had the business transacted been that of Mr. Rupprecht and had he been found in the state of Wisconsin, certainly service could have been made upon him. The only way the corporation whose business he was authorized to transact could act in relation thereto was by doing so by and through its representative. He had authority to speak on behalf of the

company, for the time being the company was manifesting its presence in his person and acts, it was doing its business here in Wisconsin and protecting its interests through him. As an individual Rupprecht might have come into the state without bringing the corporation with him, but as an officer coming here by direction of the corporation to manage and do the particular business of the corporation, he did bring the corporation with him. To hesitate so to hold is making a question of a patent fact. Fond du Lac C. & B. Co. v. Henningsen, 141 Wis. 70; Premo Specialty Mfg. Co. v. Jersey Creme Co., 280 Fed. 352; 43 L. F. A. n. s., 1015.

The corporation has been admitted into the general economy of things as a normal business unit competing with individuals and there does not appear to be much danger of undue advantage being taken of it if treated as a legal personality protected to the extent it is by the Wisconsin statute. If a corporation desires to stay out of a certain jurisdiction it may easily do so by refusing to have [fol. 110] its officers or agents enter the state for the purpose of doing business for it in that state. In this it has no greater burden and no greater advantage than would have had an individual under similar circumstances. It is privileged to do business anywhere and everywhere upon complying with the laws of the jurisdiction into which it enters. Quoting again from the Fond du Lac C. & B. Co. case, supra, the president, "at that time and for that definite purpose was the corporation which therefore was present in this state. Hence, there is no obstacle in the inherent limits on the powers of the state, or in any prohibitions to the federal constitution, to the acquisition of jurisdiction by our courts by personal service of their process on the defendant present within our borders. The service in fact made was that authorized by our statute and was such as to satisfy all requirements of due process of law."

We are of the opinion that the plain language of the statute as interpreted by Fond du Lac C. & B. Co. v. Henningsen, 141 Wis. 70, applied to the facts in this case, compels a ruling that the service was good. The decision in Commercial Mutual Accident Co. v. Davis, 213 U. S. 245, appears to be applicable. The statute there under consideration provided for service on one, "who adjusts or settles a loss." The opinion relates that the company sent its

representative with authority to settle the claim sued on into the state of Missouri. There was a bona fide attempt to settle the controversy between the parties and when it failed service of summons was made. This service was held good.

We agree with the conclusion reached by the trial court and hold that the return made shows the petitioner not entitled to a writ of prohibition.

By the Court: The demurrer to the return is overruled and writ denied.

[fol. 111] In Supreme Court of Wisconsin

[Title omitted]

Order Amending Mandate—Nov. 22, 1932

Ordered that the mandate heretofore entered herein, be, and the same is hereby, amended by adding thereto the following: "Temporary restraining order dissolved."

[fol. 112] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 113] Supreme Court of the United States

Statement of Points to be Relied Upon and Stipulation of Parts of the Record to be Printed—Filed Dec. 31, 1932

Comes now the Consolidated Textile Corporation, the appellant in the above entitled action, and adopts its assignment of errors as its statement of the points to be relied upon, and states it expects to rely upon each and all of the assignments of errors which are attached to the record filed in this case.

It is hereby stipulated between the respective parties hereto, that the following parts of the record need not be printed and that the same are not necessary for a considera-

tion of the assignment of errors, or any of them, and that the remaining portions of the record shall be printed:

(1) Omit motion to quash alternative writ of prohibition, page 86 of the record, and insert in lieu thereof the following: "Here appears motion to quash alternative writ of prohibition."

(2) Omit admission of service of petition for writ of prohibition, alternative writ of prohibition and motion to quash alternative writ of prohibition, pages 87 and 88 of the record, and insert in lieu thereof the following: "Here appears admission of service of petition for writ of prohibition, alternative writ of prohibition and motion to quash alternative writ of prohibition."

(3) Omit motion to withdraw motion to quash alternative writ of prohibition and supporting affidavit, pages 95, 96, 97 and 98 of the record, and insert in lieu thereof the following: "Here appears motion to withdraw motion to quash alternative writ of prohibition and supporting affidavit."

[fol. 114] (4) Omit bond on appeal, pages 5 to 12, inclusive, of the record, and insert in lieu thereof the following: "Here appears bond on appeal duly approved by the Chief Justice of the Supreme Court of the State of Wisconsin."

(5) Omit Præcipe for transcript on said appeal, pages 44 to 47, inclusive, of the record, and insert in lieu thereof the following: "Here appears præcipe for transcript on said appeal, together with admission of service."

(6) Omit Admission of service of copies of the petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction of the Supreme Court of the United States, pages 19 to 21, inclusive, of the record, and insert in lieu thereof the following: "Here appears admission of service of copies of the petition for appeal, order allowing appeal, assignment of errors and statement as to jurisdiction of the Supreme Court of the United States."

(7) Omit Exhibit "A" to "F," inclusive, attached to alternative writ of prohibition, part of page 85 of the record, and insert in lieu thereof the following: "Here appears Exhibits "A" to "F," inclusive, which are identical with Exhibits "A" to "F," inclusive, attached to the petition,

pp. 49-56 incl., for writ of prohibition." (Pages 57 to 77, incl., Exhibits.)

It is further stipulated that the Clerk may proceed to docket the above entitled action at once.

Dated December 23, 1932.

George B. Hudnall, Louis A. Lecher, Frank L. McNamara, Sml. O. Arnold, Counsel for Appellant. Walter L. Gold, Ray T. McCann, Morris Karon, Counsel for Appellee.

[fol. 115] [File endorsement omitted.]

Endorsed on cover: File No. 37,284. Wisconsin Supreme Court. Term No. 587. Consolidated Textile Corporation, appellant, vs. John J. Gregory, Judge of the Circuit Court of Milwaukee County. Filed December 31, 1932. File No. 37,284.